

§ 4.123

deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member or hearing officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or hearing officer. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 4.123 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding Board member or hearing officer shall otherwise order.

§ 4.124 Submission of briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Board member or hearing officer at the conclusion of the hearing.

POSTHEARING PROCEDURE RULES

§ 4.125 Decisions.

Decisions of the Board will be made upon the record, as described in § 4.114(b). Copies thereof will be forwarded simultaneously to both parties by certified mail.

§ 4.126 Motions for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon in support of the motion, and shall be filed within 30 days from the date of

43 CFR Subtitle A (10-1-06 Edition)

the receipt of a copy of the Board's decision by the party filing the motion. Reconsideration of a decision, which may include a hearing or rehearing, may be granted if, in the judgment of the Board, sufficient reason therefor appears.

§ 4.127 Dismissals.

(a) *Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with the disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the board may, in its discretion, dismiss such an appeal from the docket without prejudice to its reinstatement when the cause of suspension has been removed. Unless either party or the Board acts within 3 years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed to have been made with prejudice.

(b) *Dismissal for failure to prosecute or defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If no cause is shown, the Board may take appropriate action.

§ 4.128 Remands from courts.

Whenever any matter is remanded to the Board from any court for further proceedings, each of the parties, shall, within 20 days of such remand, submit a report to the Board, recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and issue the appropriate special orders.

APPENDIX I TO SUBPART C OF PART 4— SUGGESTED FORM OF NOTICE OF APPEAL

Interior Board of Contract Appeals, 801
North Quincy Street, Arlington, VA 22203
(Date) _____

Office of the Secretary, Interior

§ 4.201

(Name of Contractor) _____
(Address) _____
Contract No. _____
(Invitation No.) _____
Specifications No. _____
(Name and Location of Project) _____
(Name of Bureau or Office) _____

The undersigned contractor appeals to the Board of Contract Appeals from decision or findings of fact dated _____, by:
(Name of Contracting Officer) _____

The decision or findings of fact is erroneous because: (State specific facts and circumstances and the contractual provisions involved.)

(Signature) _____
(Title) _____

[46 FR 57499, Nov. 24, 1981, as amended at 67 FR 4368, Jan. 30, 2002]

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372-74, 410; Pub. L. 99-264, 100 Stat. 61, as amended.

For provisions relating to . . .	consult . . .
(1) All proceedings in subpart D	§§ 4.200 and 4.201.
(2) The probate of trust estates of Indians who die possessed of trust property.	§§ 4.202 through 4.282 and 4.310 through 4.323.
(i) Probate matters generally	§§ 4.202, 4.206, 4.208, 4.210, 4.211, 4.250 through 4.270, 4.273 through 4.282, and 4.310 through 4.323.
(ii) Informal probate proceedings before an attorney decision maker.	§§ 4.212 through 4.215.
(iii) Formal probate proceedings before an administrative law judge or Indian probate judge.	§§ 4.203 through 4.205, 4.207, 4.216 through 4.242, 4.271, and 4.272.
(3) Tribal purchase of certain property interests of decedents under special laws applicable to particular tribes.	§§ 4.300 through 4.308.
(4) Appeals to the Board of Indian Appeals from actions or decisions of BIA.	§§ 4.330 through 4.340.
(5) Determinations under the White Earth Reservation Land Settlement Act.	§§ 4.350 through 4.357.

(b)(1) Except as provided in paragraph (b)(2) of this section, the regulations referred to in paragraph (a)(2) of this section do not apply to the restricted property of deceased Indians of the Five Civilized Tribes, deceased Osage Indians, and members of any tribe organized under 25 U.S.C. 476, to the extent that the constitution, by-laws or charter of such tribe may be inconsistent with this subpart.

(2) The regulations referred to in paragraph (a)(2) of this section do apply to trust or restricted property inherited by such deceased Indian or

CROSS REFERENCE: See 25 CFR part 15 for rules setting forth the responsibilities and practices of the Bureau of Indian Affairs in the probate of Indian estates. See subpart A of this part for the authority, jurisdiction, and membership of the Board of Indian Appeals within the Office of Hearings and Appeals. For general rules applicable to proceeding before the Hearings Division, Board of Indian Appeals, and other Appeals Boards of the Office of Hearings and Appeals, see subpart B of this part.

DETERMINATIONS OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS; TRIBAL PURCHASES OF INTERESTS UNDER SPECIAL STATUTES

SCOPE OF SUBPART; DEFINITIONS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.200 How to use this subpart.

(a) The following table is a guide to the contents of this subpart by subject matter.

member of such tribe from someone who was a member of a tribe not included in paragraph (b)(1) of this section.

(c) Except as limited by the provisions in this subpart, the rules in subparts A and B of this part apply to these proceedings.

[70 FR 11812, Mar. 9, 2005]

§ 4.201 Definitions.

Administrative law judge means an administrative law judge with the Office